

**FILED****MARCH 26, 2009**KAREN S. MITCHELL  
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

DIRK RALPH GORHAM,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

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2:06-CV-0075

**REPORT AND RECOMMENDATION TO  
DENY ISSUANCE OF A CERTIFICATE OF APPEALABILITY**

On March 25, 2009, petitioner filed a Notice of Appeal in the above-captioned habeas corpus case in which the detention complained of arises out of process issued by a State court. On December 5, 2008, this Court issued a Report and Recommendation to Deny Petition for a Writ of Habeas Corpus. On March 6, 2009, this Court issued a Supplement to the December 5, 2008 Report and Recommendation, in which it again recommended the denial of the Petition. Petitioner filed objections to both of these Report and Recommendations on December 18, 2008 and on March 17, 2009. An Order overruling the objections, adopting the Report and Recommendation and the Supplement to the Report and Recommendation, and denying the habeas application, together with a corresponding Judgment, were entered March 18, 2009.

As discussed in both of the Report and Recommendations, petitioner cannot bring a free-standing actual innocence claim, as petitioner seeks to do on federal habeas review, and none of

petitioner's other contentions have any merit. The undersigned United States Magistrate Judge therefore recommends petitioner's Certificate of Appealability be denied.

IT IS SO RECOMMENDED.

ENTERED this 26th day of March 2009.

  
CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be **filed on or before the fourteenth (14<sup>th</sup>) day after this recommendation is filed** as indicated by the "entered" date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).